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03-10198

No. _____

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO D. HALBERT, PETITIONER

vs

THE STATE OF MICHIGAN, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PETITION FOR A WRIT OF CERTIORARI

ORIGINAL

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QUESTIONS PRESENTED

1. Does Michigan's law and practice of not appointing counsel to indigent defendants convicted by guilty plea, violate Petitioner's Fourteenth Amendment right to due process?

2. Is Petitioner entitled to resentencing, where counsel failed to render effective assistance by not objecting to improper scoring under Michigan's sentencing guidelines which resulted in Petitioner receiving a considerably longer sentence?

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OPINIONS BELOW

None of the opinions entered by the trial court, Michigan Court of Appeals or the Michigan Supreme Court were published.

The December 18, 2001 Order of trial court denying Petitioner's pro-se motion to withdraw plea is appended as Exhibit C.

The December 21, 2001 and October 25, 2002 Orders of the trial court denying Petitioner's request for appointed appellate counsel are appended as Exhibits D and E, respectively.

The January 13, 2003 Order entered by the Michigan Court of Appeals denying Petitioner's "delayed application for leave to appeal" is appended as Exhibit F.

The September 19, 2003 Order entered by the Michigan Supreme Court denying Petitioner's application for leave to appeal the January 13, 2003 order of the Court of Appeals is appended as Exhibit G.

JURISDICTION

Following his conviction by nolo contendere plea, on December 10, 2001, Petitioner was sentence to 2 years to 15 years to run consecutive with a term of 4 years, 5 months to 15 years.

On December 18, 2001, the trial court entered an order denying Petitioner's pro-se motion to withdraw his plea. **Ex. C.**

On December 21, 2001, the trial court denied Petitioner request for appointed appellate attorney and on October 25, 2002, the trial court denied Petitioner's motion requesting appointed appellate counsel. **Ex. D & E.**

On January 13, 2003 the Michigan Court of Appeals entered an Order denying Petitioner's "delayed application for leave to appeal." **Ex. F.**

On September 19, 2003, the Michigan Supreme Court denied Petitioner's pro-se application for leave to appeal the January 13, 2003 order of the Court of Appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statute under Michigan Complied Laws which governs the procedure and practice for determining whether indigent defendants convicted by plea are appointed appellate counsel.

The provisions of MCL 770.3a read as follows:

> Sec. 3a. (1) Except as provided in subsections (2) and (3), a defendant who pleads guilty, guilty but mentally ill, or nolo contendere shall not have appellate counsel appointed for review of the defendant's conviction or sentence.
>
> (2) the trial court shall appoint appellate counsel for an indigent defendant who pleads guilty, guilty but mentally ill, or nolo contendere if any of the following apply:
>
> (a) The prosecuting attorney seeks leave to appeal.
>
> (b) The defendant's sentence exceeds the upper limit of the minimum sentence range of the applicable sentencing guidelines.
>
> (c) The court of appeals or the supreme court grants the defendant's application for leave to appeal.
>
> (d) The defendant seeks leave to appeal a conditional plea under Michigan Court Rule 6.301(C)(2) or its successor rule.
>
> (3) The trial court may appoint appellate counsel for an indigent defendant who pleads guilty, guilty but mentally ill, or nolo contendere if all of the following apply:
>
> (a) The defendant seeks leave to appeal a sentence based upon an alleged improper scoring of an offense variable or a prior record variable.
>
> (b) The defendant objected to the scoring or otherwise preserved the matter for appeal.
>
> (c) The sentence imposed by the court constitutes an upward departure from the upper limit of the minimum sentence range that the defendant alleges should have been scored.
>
> (4) While establishing that a plea of guilty, guilty but mentally ill, or nolo contendere was made understandingly and voluntarily under Michigan Court Rule 6.302 or its successor rule, and before accepting the plea, the court shall advise the defendant that, except as otherwise provided in this section, if the plea is accepted by the court, the defendant waives the right to have an attorney appointed at public expense to assist in filing an

> application for leave to appeal or to assist with other postconviction remedies, and shall determine whether the defendant understands the waiver. Upon sentencing, the court shall furnish the defendant with a form developed by the state court administrative office that is nontechnical and easily understood and that the defendant may complete and file as an application for leave to appeal. **MCL § 770.3a.**

The Sixth Circuit Court of Appeals sitting en banc recently held that this statute is unconstitutional as it offends the Due Process Clause of Fourteenth Amendment of the United States Constitution. See Tesmer v. Granholm, 333 F.3d 683 (CA 6, 2003).

STATEMENT OF THE CASE

On July 7, 2000, Petitioner, Antonio Dwayne Halbert, was charged with three counts of Criminal Sexual Conduct ("CSC"), Second Degree ("2nd"), contrary to Michigan Complied Laws ("MCL") 750.520(C)(1)(a). (People v. Halbert, Dkt. No. 00-19193-FH). On July 11, 2000, Petitioner was arraigned on the charges and a $10,000.00 cash or surety or 10% bond was set.

On December 20, 2000, Petitioner was placed on bond and a preliminary examination was scheduled for August 18, 2000. Given the nature of the charge, as a condition of bond Petitioner was ordered not to reside in the same residence as the victim, his stepdaughter, Shavonne Harris.

On October 19, 2000, the preliminary examination was waived and the case was bound-over to the Saginaw Circuit Court for trial.

On July 12, 2001, police investigated a report from a Michigan National Bank teller that a young girl needed police assistance. Further investigation lead police to Petitioner's former residence, where police spoke with Shavonne and her mother, Wavonne Halbert. Shavonne informed police that Petitioner had sexual assaulted her while she was asleep in the house and had left in his car. Police put out a description of Petitioner's vehicle. Whereupon he was stopped without incident and conveyed to the police station.

During an interview with police, Petitioner stated he was suicidal and wanted to kill himself. Police conveyed Petitioner to Saginaw County Mental Health, where he was evaluation but

not arrested at the time.

Petitioner continued on bond with his caseworker at Saginaw County Mental Health. On July 26, 2001, he was arrested for one count of CSC, MCL 750.520(C)(1)(b). (**People v. Halbert**, **Dkt. No. 01-20597**). Petitioner's bond was revoked.

Pursuant to Michigan Court Rule ("MCR") **6.302(B)(3)**, on November 7, 2001 Petitioner entered a plea of nolo contendere on one count of each docket. In exchanged for his plea, three counts of 2nd Degree CSC were nolle prossed regarding Docket #00-19193-FH. The prosecutor recommended that Petitioner be sentenced within the sentencing guidelines, but requested the court impose consective sentencing. **See** (**Tr. 2; 11/7/01**).[1]

Additionally, the nolo contendere plea was negotiated to preclude Petitioner and his wife, Wavonne Halbert's exposure to civil liability in an active neglect proceeding. (**Tr. 3; 11/7/01**). Petitioner has had a psychiatric history and throughout the trial proceedings he was on the following medications: (1) Gloucopage, Flexiril, Buspar for anxiety, and Celexa for depression. **See** **PSR pp. 1, 9.** In fact, prior to his incarceration, Petitioner received Social Security Disability due to his mental health status. **PSR p. 10.**

By stipulation of the parties, the factual basis for the nolo contendere plea was derived from police reports as referred

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1/ References to the lower court trial proceedings are denoted as "Tr." followed by the page number and date of proceedings. References to the sentencing proceedings are denoted as "S.T." followed by the page number and date. PSR denotes references from the Presentence Investigation Report. Docket Entries are denoted by "DE".

to by the prosecutor. (**Tr. 3; 11/7/01**). The colloquy between the Petitioner and the court with regard to the fundamental rights he would waive by entering his plea was in accordance with MCR **6.302(B)(1) - (5) and (C)**. Of particular import, however, is the following advisement by the court to Petitioner:

> THE COURT: You understand if I accept your plea and you are financially unable to retain a lawyer to represent you on appeal, the Court must appoint an attorney for you **if the sentence I impose exceeds the sentencing guidelines** or you seek leave to appeal a conditional plea or the prosecutor seeks leave to appeal or the Court of Appeals or Supreme Court grants you leave to appeal. **Under those conditions I must appoint an attorney, do you understand that?**
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Further, if you are financially unable to retain a lawyer to represent you on appeal, the Court may appoint an attorney for you if you allege an improper scoring of the sentencing guidelines, you object to the scoring at the time of the sentencing and the sentence I impose exceeds the sentencing guidelines as you allege it should be scored. Under those conditions I may appoint an attorney for you, do you understand that?
>
> THE DEFENDANT: Yes, sir.

(Tr. 7, 11/7/01) (emphasis added).

Here, the court clearly informs Petitioner that it "must appoint an attorney for [him] if the sentence [it] impose exceeds the sentencing guidelines", but indicates an attorney "may" be appointed if an improper scoring of the sentencing guidelines is alleged providing that counsel objects to the scoring at the time of the sentencing and the sentence imposed exceeds the sentencing guidelines in the manner alleged. (**Tr. 7, 11/7/01**).

When accepting the plea the court indicated the following

with regard to the factual basis for the plea.

> THE COURT: The Court has reviewed the preliminary examination in the case involving Maria McKinney and ... I read the police reports involving Shayvon Harris and I find that if the information contained in there were believed by the trier of fact they would prove beyond a reasonable doubt the elements of the two charges here.
>
> Furthermore, because of the potential for civil litigation, the very nature of the case, the no contest plea is appropriate.
>
> Do counsel believe I've complied with the court rule regarding no contest pleas?
>
> MS. MARSHALL: People, are satisfied.
>
> MR. O'FARRELL: Yes, Your Honor.
>
> THE COURT: I will state for the record I have not agreed on a possible plea or possible sentence with the prosecutor, the defendant or anyone acting in the interest of either. I find the plea understandingly made, voluntary and accurate. I'll accept it. I'll refer the matter to the department of corrections for a presentence investigation.

(Tr. 9-10; 11/7/01) (emphasis added).

The court states that it reviewed preliminary examination in the case involving Maria McKinney (i.e. Dkt. No. 00-19193-FH). The problem with this is that there was no preliminary examination in either case involved. **See Appendix "DE" @ 10/19/00; Dkt. # 00-19193-FH; DE @ 9/12/01; Dkt. # 01-20597-FH.**

On December 10, 2001, Petitioner was sentenced to 2 years to 15 years on Docket No. 00-19193 to run consecutive with a 4 year 5 months to 15 years terms on Docket No. 01-20597. **(S.T. 5).** During the proceedings, defense counsel did not object to the scoring of the guidelines, but argued that sentences from each case be served concurrently. **(S.T. 2-4; 12/10/01).**

At the time of sentencing Michigan's legislative sentencing

guidelines were enacted and superseded the former judicial sentencing guidelines. **See MCL 777.1 et. seq.** At the close of sentencing proceedings, Petitioner was provided a "Notice Of Rights After Sentencing (After Plea of Guilty/Nolo Contendere) And Request For Appoint Of Attorney" form. **Ex. A.** He submitted the form that day. **Id.**

On December 17, 2001, Petitioner filed a handwritten pro-se motion to withdraw plea. **See DE 12/17/01; Dkt. No. 00-19193-FH or 01-205976-FH.**[2] The motion claimed that Petitioner should be permitted to withdraw his plea because the sentenced imposed was not consistent with the terms of the plea agreement he discussed with his attorney, which provided that the minimum term of imprisonment would not exceed four years because the two sentences would run concurrently. **See Ex. C.** On December 18, 2001, the trial court entered an order and opinion denying the motion to withdraw because the record did not reveal an agreement as to if the sentences were to run concurrent or consecutive. **Ex. C.**

On December 21, 2001, the court entered an order denying the form Petitioner submitted at sentencing requesting appointment of appellate counsel to assist him in filing an application for leave to appeal to the Michigan Court of Appeals. **See Ex. A & D.** The court's order held that Petitioner did not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal, that

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2/ The prisoner who prepared this motion for Petitioner did so without the change of plea and sentencing transcripts.

defendant presented no meritorious issues, that his plea was not conditional, that his sentence was in accordance with plea bargain, that his sentence was within the guidelines, and that his plea was voluntary. **Ex. D.**

Subsequently, Petitioner filed a pleading styled "Motion for Appointment of Counsel and Remand for Evidentiary Hearing/Resentencing". The motion argued that Petitioner's trial counsel failed to render effective assistance of counsel because he was preoccupied with other matters. In support, Petitioner presented a "Stipulation And Order To Adjourn Trial Scheduled For June 12, 1001", wherein the court noted that defense counsel, Rod O'Farrell was advocating in a multi-defendant drug conspiracy trial in the United States District Court. See **Ex. B.** On October 25, 2002, the court denied the motion holding that Petitioner did not "have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal" and citing People v. Bulger, 462 Mich. 495 (2000), as authority. **Ex. D.**

Next, Petitioner prepared and submitted, pro-se, a delayed application for leave to appeal to the Michigan Court of Appeals ("COA"). **(People v. Halbert, COA No. 244756).** The application argued the following: (1) That Defendant-Appellant was denied effective assistance of counsel at sentencing resulting in a sentence which was based upon improperly scored sentencing guidelines and a combined consecutive sentence which exceeded appropriate scores; and (2) The trial court should ensure that the sentencing guidelines are evaluated for correctness so that

the appropriate minimum sentencing range is applied.

On January 13, 2003, the COA issued an order denying the application for lack of merit in the grounds presented. **Ex. F.**

On February 21, 2003, Petitioner submitted a pro-per application for leave to appeal the COA judgment to the Michigan Supreme Court. **(People v. Halbert, S.C. No. 123342).** The application presented the exact two claims presented to the COA along with the following new issue: That Defendant should have been appointed counsel to assist in filing his application for leave to appeal to the COA, where the issues raised challenged the scoring of the sentencing guidelines and questioned the effectiveness of counsel at sentencing. In support, Petitioner cited the decision of the Sixth Circuit Court of Appeals in **Tesmer v. Granholm, 114 F.Supp.2d 603 (2000),** wherein the court held that Michigan statute MCL 770.3(a)(1) governing the appointment of counsel for indigent defendants who plead guilty or nolo contendere was unconstitutional.[3]

On September 19, 2003, the Michigan Supreme Court entered a majority opinion ordering that the application be denied. **Ex. G.** However, two justices dissented holding that they "would remand to the Court of Appeals for reconsideration of the defendant's application for leave to appeal ..., direct the Court of Appeals, before reconsidering the application, to remand

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3/ Tesmer v. Granholm, **114 F.Supp.2d 603 (2000) (holding MCL 770.3(a)(1) unconstitutional). vacated and remanded, 295 F.3d 536 (CA 6, 2002) (holding MCL 770.3(a)(1) constitutional); vacated, reversed in part, remanded Tesmer v. Granholm, (En Banc) 333 F.2d 683 (CA 6, 2003) (holding MCL 770.3(a) unconstitutional).**

the case to the Saginaw Circuit Court for appointment of counsel ..., [and that] [c]ounsel then could, within a reasonable time limit set by the Court of Appeals, file a supplement which the Court of Appeals would consider as though it were a part of the defendant's initial application." Ex. G.

Because the Michigan Supreme Court has decided an important federal question in a way that conflicts with the decision of the Sixth Circuit Court of Appeals, Petitioner now request this Court exercise its discretionary power and grant petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. MICHIGAN'S PRACTICE AND LAW OF NOT APPOINTING COUNSEL TO INDIGENT DEFENDANTS CONVICTED BY PLEA OF GUILTY, GUILTY BUT MENTALLY ILL, OR NOLO CONTENDERE, VIOLATED PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

In 1994, Michigan voters amended the state constitution to eliminate appeals as of right for criminal defendants who plead guilty, guilty but mentally ill or nolo contendere.[4] See Mich. Const. Art I, § 20. Such defendants must file petitions for appeal, and the Michigan Court of Appeals may grant leave to appeal after review of the petitions.

Practice And Codification:

"Several state judges began to deny appointed appellate counsel to those indigents who plead guilty." See Tesmer v. Granholm, 333 F.3d 683, 687 (CA 6, 2003). The practice was later codified by Michigan's legislature in 2000. The statute

4/ For convention throughout the petition only guilty pleas will be referred to unless otherwise necessary for clarity.

provides that those who plead guilty generally "shall not have appellate counsel appointed for review of the defendant's conviction or sentence." MCL 770.3(a)(1). The statute also provides exceptions to this general prohibition. The court must appoint counsel to aid in review of the conviction or sentence when one of four situations occurs: (1) the prosecution seeks appeal, (2) the sentence exceeds the upper end of the guideline range, (3) the defendant's petition for appeal is granted, or (4) the defendant has entered a conditional plea. MCL 770.3(a)(2).

The court also has discretion to appoint counsel if three situations all occur related to sentencing: (1) the defendant alleges that the sentence was based on improper scoring of the offense or prior record, (2) the defendant objected to the scoring or preserved the matter for appeal, and (3) the sentence was an upward departure from the upper limit of the range that the defendant alleges should have been scored. MCL 770.3(a)(3).

These statutory provisions were addressed and applied by the Michigan Court of Appeals and all defendants convicted by guilty plea at sentencing were provided appeal forms approved by the court administrator listing this information. See People v. Majar, 229 Mich. 393 (1998); People v. Bulger, 462 Mich. 495; 614 N.W.2d 103 (2000); Ex. A. At sentencing on December 10, 2001, Petitioner was given an appeal form with which he could request appointment of appellate counsel. Ex. A.

Before Petitioner pled guilty or his sentence was imposed, three indigent defendants who were denied appointed appellate

counsel brought an action in the Eastern District of Michigan under 42 U.S.C. § 1983, alleging that the practice and the statute violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. See Tesmer v. Granholm, 114 F.Supp.2d 603 (E.D. Mich. 2000). The group of plaintiffs also included two attorneys who accepted appointments in criminal proceedings. The defendant in this action were three Michigan circuit court judges who had denied the indigent plaintiffs appointed appellate counsel and the state attorney general. Id.

After a hearing on motions, the district court found that the plaintiff attorneys had third-party standing and that the court should abstain from hearing indigent Tesmer's claims. The court further declared the challenged statute and practice unconstitutional, but issued no separate judgment or decree. After defendant Judge Lynda Heathscott and non-party Judge Dennis Kolenda refused to appoint appellate counsel for non-party indigents, plaintiffs sought injunctive relief and class certification. On June 30, 2000, the district court entered an injunction against Heathscott and Kolenda, denied certification of a class of judge-defendants, and bound all Michigan State judges to the injunction. See Tesmer v. Kowalski, 114 F.Supp.2d 622 (E.D. Mich. 2000). All this occurred before Petitioner's nolo contendere plead was entered on November 7, 2001 or his sentenced was imposed on December 10th.

The three named judges in the initial suit and Judge Kolenda appealed from the June 30th order and a panel of the Sixth

Circuit Court of Appeals held that abstention barred review of any of the named indigents' claims and that the attorney had third-party standing. It reversed the district court and held that the denial of appointed appellate counsel did not violate the United States Constitution. See Tesmer v. Granholm, 295 F.3d 536 (CA 6, 2002).

A majority of the judges of the Sixth Circuit elected to rehear the appeal en banc. Tesmer v. Granholm, 333 F.3d 683 (CA 6, 2003). The en banc court held: (1) Younger[5] abstention applied to indigents' claims; (2) attorneys had third-party standing; (3) statute violated due process as applied; and (4) injunction enjoining non-party judges from the practice was impermissibly broad. Id. @ 704.

Nothwithstanding, Michigan courts are still bound by precedent. People v. Bajar, supra.; People v. Bulger, supra. As stated, Bulger, was decided after the federal district court in Tesmer v. Granholm, 114 F.Supp.2d 603, was decided holding MCL 770.3 was unconstitutional and before that decision was reversed by a panel of the Sixth Circuit.[6] The court in Bulger held that neither the state nor the federal constitution requires the appointment of counsel under the circumstances of this case. 462 Mich. @ 521-22. The Bulger court reasoned that "the federal

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5/ Younger v. Harris, 401 U.S. 37; 91 S.Ct. 746; 27 L.Ed.2d 669 (1971).

6/ The district court decided Tesmer on March 31, 2002. 114 F.Supp.2d 603 (E.D. Mich. 2000). On May 9, 2000, the district court issued its injunction. 114 F.Supp.2d 622 (E.D. Mich. 2000). The en banc court vacated the panel decision and rendered its judgment on June 17, 2003. 333 F.2d 683 (CA 6, 2003).

constitution does not mandate appointment of counsel under the present circumstances because defendant has not been denied meaningful access to Michigan's Appellate Courts." Id. However, two justices dissented and noted as follows:

> This Court's decision leaves indigent defendants standing in a cloud of dust on the roadside on the way to appellate justice. Defendants who can pay for the services of an attorney will be represented at trial level, will have their cases reviewed by appellate attorneys, and will have lawyerlike presentations to our Court of Appeals. In other words, they will have meaningful appeals. Defendants who cannot pay for an attorney will have trial level representation, and will be left without any appellate representation whatsoever. The only thing more that they will have is the meaningless ritual in our Court of Appeals. **Bulger**, 462 Mich. @ 581 (Cavanagh, J. and Kelly, J., dissenting).

In reaching of this conclusion, the dissenting justices in **Bulger** noted as follows:

> The majority acknowledge[d] that an indigent Proposal B (the voting consideration that ratified the amendment of Art 1, § 20 of Michigan Constitution) defendant's tools are not equivalent to those present in **Ross**[7], but that acknowledgment is akin to an acknowledgment that the Titanic had some difficulty staying afloat. Under the majority's decision, the instant defendant, and every indigent Proposal B defendant, has nothing like the tools present in **Ross**. Instead, they have a meaningless ritual. **Bulger**, 462 Mich. @ 579 (Cavanagh, J. dissenting opinion).

Petitioner's situation is even worse than that envisioned by the dissenting judges in **Bulger**. Specifically, Defendant was sentenced on December 10, 2001. He submitted his request for appointed appellate counsel on December 11, 2001. **Ex. A.** On December 17, 2001, Petitioner filed a handwritten pro-se motion to withdraw plea. **(D.E 12/17/01).** On December 18, 2001,

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7/ **Ross v. Moffitt**, 417 U.S. 600; 94 S.Ct. 2437; 41 L.Ed.2d 341 (1974).

the trial court denied the motion to withdraw plea. **Ex. C.** In that order, the trial court states that "[t]he Defendant's Motion to Withdraw Plea is not timely as it was made after sentencing on December 11, 2001." **Ex. C.** This holding is clearly erroneous.

MCR 6.311(A), governs challenges to plea after sentencing and provides the following:

> (A) **Motion to Withdraw Plea.** The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal.[8] After the time for filing an application for leave, the defendant may seek relief in accordance with the procedure set forth in subchapter 6.500.

This provision clearly provides that Petitioner's motions to withdraw his plea was properly made after sentencing. More importantly, the **Bulger** analysis of the **Ross** decision guided it to hold the following procedures necessary to meet the **Ross** meaningful access requirement.

> **B. INDIGENT GUILTY PLEA DEFENDANTS IN MICHIGAN HAVE MEANINGFUL ACCESS TO THE APPELLATE SYSTEM.**
>
> Given the obvious differences between trial-based and guilty plea convictions, it is clear that our current guilty plea procedures provide sufficient methods of assistance to meet the **Ross** meaningful access requirement. To preserve an issue for appeal, a defendant must move to withdraw his plea before the trial court. **MCR 6.311(C).** MCR 6.005(H)(4) states that "unless an appellate lawyer has been appointed, [appointed trial counsel is responsible for the] filing of postconviction motions the lawyer deems appropriate, including motions ... to withdraw plea, or for resentencing." **(emphasis and brackets in original).**

8/ An application for leave to appeal "must be filed within 21 days after the entry of the judgment or order to be appealed from or within other time as allowed by law or rule." **MCR 7.205(A).** A "delayed" application for leave to appeal can be filed 12 months after entry of the order or judgment. **MCR 7.205(F)(3).**

Based upon these provisions, the **Bulger** court held that the "court rules require trial counsel to assist the defendant in organizing and presenting to the trial court any potential appellate issues that warrant perservation. Accordingly, a pro se defendant seeking discretionary review will have the benefit of a transcript, trial counsel's framing of the issues in the motion to withdraw, and the trial court's ruling on the motion." **Bulger**, @ 518.

While this conclusion appears sufficient in theory, in practice it too fails to provide meaningful access to the appellate system. Specifically, MCR 6.005(H)(4) indicates that the filing postconviction motion is contingent upon what "the lawyer deems appropriate." **MCR 6.005(H)(4)**. In the instant case, Petitioner wrote his attorney before sentencing. **Ex. H.** In a letter dated May 21, 2000, his attorney responded indicating his opposition to filing a motion to withdraw and informing Petitioner that he would have to pursue the issue on appeal, pro-se. **Ex. H.** Consequently, Petitioner filed his pro-se motion to withdraw plea without the assistance of counsel or the lower transcripts. **(D.E. 12/17/01)**. Hence, even under the holding in **Bulger**, Petitioner did not have meaningful access to the appellate system.

This conclusion is further supported by two dissenting justices of the Michigan Supreme Court realized this and in a dissenting statement indicated as follows:

> I would remand to the Court of Appeals for reconsideration of the defendant's application for leave to appeal. I would further direct the Court of Appeals, before reconsidering the application, to remand the case to the Saginaw Circuit Court (i.e. trial court) for appointment of counsel. Counsel then could, within a reasonable time limit set by the Court of Appeals, file a supplement with the Court of Appeals would consider as though it were a part of the defendant's initial application." **Ex. G.**

Additionally, the fact that Petitioner claims his trial attorney rendered ineffective assistance of counsel at sentencing also indicates how the **Bulger** court's dependence on the provisions of MCR 6.005(H)(4) is unfounded in this case. Indeed, "an attorney who handles both trial and appeal is unlikely to raise an ineffective assistance claim again himself." **Massaro v. U.S.**, 123 S.Ct. 1690, 1693 (2003) (citing **Massaro v. U.S.**, 27 Fed.Appx. 26 (2001)(unpublished case)). Had appellate counsel been appointed as suggested by the dissenting justices of the Michigan Supreme Court, **Ex. G**, Petitioner would have had the assistance consistent with the **Ross requirement**. Depending on the provisions of MCL 770.3(a)(2), and the general practice of Michigan trial courts, the trial court denied Petitioner such assistance simply because of his indigence. In effect, this practice and law "create a different opportunity for access to the appellate system based upon indigency. As applied, the statute violates the due process provision of the Fourteenth Amendment to the United States Constitution, and is thus unconstitutional." **Tesmer v. Granholm**, 333 F.3d @ 701.

II. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING, WHERE COUNSEL FAILED TO OBJECT TO THE IMPROPER SCORING.

It is well settled that a criminal defendant is entitled to effective assistance of counsel at all critical stages of the court proceedings. **Strickland v. Washington**, 466 U.S. 668;

104 S.Ct. 2052; 80 L.Ed.2d 674 (1984). Under **Strickland**, a defendant claiming ineffective counsel must show that counsel's actions were not supported by reasonable strategy and that the error was prejudicial. **Id**.

Substantive Law:

"By formal enactment of the Legislature, Michigan became subject to guidelines with sentencing ranges that do require adherence." **People v. Hegwood**, 465 Mich. 432, 438; 636 N.W.2d 127 (2001). Because Petitioner was convicted by nolo contendere plea, as argued, any appeal of his sentence would be by leave and in Michigan is governed by the provisions in MCL 770.3(a). The trial court has discretion to appoint appellate counsel for an indigent defendant in such circumstances "if all of the following apply:

> (a) The defendant seeks leave to appeal a sentence based upon an alleged improper scoring of an offense variable or a prior record variable.
>
> (b) The defendant objected to the scoring or otherwise preserved the matter for appeal.
>
> (c) The sentence imposed by the court constitutes an upward departure from the upper limit of the minimum sentence range that the defendant alleges should have been scored.

(MCL 770.3(3)(a) - (c)).

MCR 6.425(D)(1) provides that "[t]he court must use the sentencing guidelines, as provided by law. Not later than the date of sentencing, the court must complete a sentencing information report ("SIR") on a form to be prescribed by and returned to the state court administrator."

Facts:

The SIR for Docket No. 00-19193 calculated the offense

variable total at 45 and the offense level total at IV, which yielded a minimum sentencing guideline range of 12 to 24 months. **See Ex. I.** The SIR for this case also indicated Petitioner was eligible for a sentence of 24 months probation. **Id**.

Deficient Performance:

In his postconviction motions, Petitioner contended that his Offense Variable score was improper. Specifically, OV-9 requires the trial court to assign ten points to this variable if the crime involves two to nine victims. **MCL 777.39(1)(c).** Further, MCL 777.39(2)(a) specifically states that, in scoring the variable, the trial court must "[c]ount each person who was placed in danger of injury or loss of life as a victim." The Felony Information indicates that count one only involved one victim. **Ex. K; see also (Tr. 2; 11/7/01).** Moreover, the incident connected with count one occurred on June 27, 2000 at the Buena Vista Community Center at 1940 S. Outer Drive. **Ex. K.** Although count two of Information consist of an incident with another individual that allegedly occurred on April or May of 2000, this charged was dismissed pursuant to the plea agreement and did not occur contemporaneously with events connected with count one.

Accordingly, count two clearly was not **"the crime in question"** and the alleged activity connected with that count should not have been considered to calculate OV-9. **See People v. Kimble, 252 Mich App. 269 (2002) (Holding that "OV-9 must be scored at ten points if the 'crime in question' involved two to nine victims'").** The 10 points assigned under OV-9 was

therefore misscored. "A misscoring error might be better characterized as attributing the wrong number of points to an offense variable that would normally apply. **See Kimble, supra. @ 277, n. 6.** Defense counsel's failure to object to this misscoring constitutes deficient performance under **Strickland, supra.**

The twenty-five points assigned to OV-13 is also misscored. MCL 777.43 requires that the offense be part of a pattern of felonious criminal activity involving 3 or more crimes against **"a person"**. Again, the conviction under count one of the information involved only one person, Maria McKinney. **Ex. K.** Hence, the 25 points assigned to OV-13 was misscored. This too reveals that defense counsel's performance was deficient at sentencing.

Prejudice:

Collectively, the misscoring of OV-9 (10pts) and OV-13 (25pts) totals 35 points. Absent this score, the proper sentencing Offense Level is III. Factored with the Prior Record Variable ("PRV") Level of A (i.e. A-III) on the sentencing grid results in a sentencing range of 0-17 months, as opposed to 12 to 24 months. Given the fact that the sentencing court imposed consecutive terms of imprisonment at the top end of the guidelines in both cases, counsel's deficient performance was prejudicial as it subjected Petitioner to a considerably longer term of imprisonment.

Under Case Number 01-20597, the SIR indicates that PRV-7 was misscored at 10 points. **See Ex. J.** PRV-7 requires the

court to score 10 points "if the offender was convicted of multiple felonies counts or was convicted of a felony after the sentencing offense was committed." **MCL 777.7; 2001 Sentencing Guideline Manual ("SGM") @ p. 11.** Petitioner was only convicted of one count under Case Number 01-20597. **Ex. J; (Tr. 2; 11/7/01).** In addition, count one of Case Number 00-19193 occurred on June 27, 2000, **Ex. K,** which is prior to the July 17, 2001 date on which the offense under Case Number 01-020597 occurred. Accordingly, PRV-7 should have been scored zero.

OV-13 was scored at 25 points under Case Number 01-020597. This too is misscored. As argued above, MCL 777.43 requires that the offense be part of a pattern of felonious criminal activity involving 3 or more crimes against **"a person"**. The conviction under Case Number 01-20597 only involved one victim, Shavonne Harris. **Ex. L.** Absent these errors, the actual sentencing level of A-IV, instead of C-IV applied. This results in a sentencing range of 12 to 24 months as opposed to 29 to 57 months. Accordingly, but for counsel's deficient performance, even with the habitual offender enhancement and consecutive service of the two sentences imposed, Petitioner would have received a considerably lesser term of imprisonment.

This Court held in **Glover v. United States, 531 U.S. 198; 121 S.Ct. 696; 148 L.Ed.2d 604 (2001),** that in evaluating a claim of ineffective assistance of counsel, a defense attorney's failure to argue the proper sentencing guidelines scoring may satisfy the prejudice prong of **Strickland.** Where, as here,

counsel failed to object or otherwise advocate misscoring of the sentencing guidelines and such failure resulted in a considerably longer term of imprisonment, his or her performance is deficient and prejudicial, thus constitutes ineffective assistance. **Glover**, **supra.**

In sum, the decision reached by the Michigan Supreme Court in **Bulger**, **supra**., has sanctioned a practice in the trial court of Michigan that denies counsel to indigents who were convicted by plea of guilty, guilty but mental ill or nolo contendere. Such indigent defendants will have trial level representation, and will be left without any appellate representation whatsoever. Conversely, defendants who can pay for the services of an attorney will be represented at trial level, will have their cases reviewed by appellate attorneys, and will have lawyerlike presentations to the Michigan Court of Appeals for appeal by leave.

This ruling by the Michigan Supreme Court is in direct conflict with the decision reached by the Sixth Circuit Court of Appeals sitting en banc in **Tesmer v. Granholm**, 333 F.3d 683 (CA 6, 2003). The rationale by the **Tesmer** Court clearly indicates that the practice and law of Michigan courts offends the due process clause of the Fourteenth Amendment to the United States Constitution as applied by this Court in **Douglas v. California**, 372 U.S. 353; 83 S.Ct. 814; 9 L.Ed.2d 811 (1963) and **Ross v. Moffitt**, 417 U.S. 600; 94 S.Ct. 2437; 41 L.Ed.2d 341 (1974).

Consequently, Petitioner was unable to properly present

his claim that counsel rendered ineffective assistance at sentencing to the Michigan Court of Appeals. Rather, he was only afforded the opportunity to engage in a meaningless ritual.

Because under Michigan law and practice other indigents convicted by guilty plea are similarly situated, this Court should exercise its discretionary jurisdiction and grant certiorari to resolve the questions involved in this matter.

CONCLUSION

WHEREFORE, for the reasons stated heretofore, Petitioner respectfully request this Honorable Court grant certiorari and resolve the questions presented herein as the Court determines comports with justice.

Date: 11/16/03

Antonio Halbert

Antonio Halbert #382400
Petitioner/Pro-per
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI. 48446-2987

Order

Entered: September 19, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

123342

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANTONIO DWAYNE HALBERT,
Defendant-Appellant.

SC: 123342
COA: 244756
Saginaw CC: 00-19193-FH-2;
01-020597-FH-2

_____/

On order of the Court, the application for leave to appeal the January 13, 2003 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Cavanagh, J., states as follows:

I would remand to the Court of Appeals for reconsideration of the defendant's application for leave to appeal. I would further direct the Court of Appeals, before reconsidering the application, to remand the case to the Saginaw Circuit Court for appointment of counsel. Counsel then could, within a reasonable time limit set by the Court of Appeals, file a supplement which the Court of Appeals would consider as though it were a part of the defendant's initial application.

Kelly, J., joins in the statement of Cavanagh, J.

s0916

Ex. G

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 19, 2003 _____
Clerk

Court of Appeals, State of Michigan

ORDER

PEOPLE v ANTONIO DWAYNE HALBERT

Docket No. 244756

LC No. 00-19193-FH-2; 01-020597-FH-2

HILDA R. GAGE
Presiding Judge

E. THOMAS FITZGERALD

HENRY WILLIAM SAAD
Judges

The Court orders that the defendant-appellant's delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

HILDA R. GAGE
Presiding Judge

Ex. F

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 13 2003
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

V.

File No. 00-019193-FH-2
01-020597-FH-2

ANTONIO D. HALBERT,

Defendant.
_____/

ORDER OF THE COURT

At a session of said Court, held in the Courthouse in the City and County of Saginaw, State of Michigan, on the 25th day of October, 2002.

PRESENT: HONORABLE ROBERT L. KACZMAREK, CIRCUIT JUDGE.

This matter comes before the Court for the Appointment of Counsel. In the instant case, an Order was issued by the Court denying the Defendant's Motion for Appellate Counsel. Having reviewed the case and current case law, the defendant does not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal. *People v. Bulger*, 462 Mich 495 (2000), *cert den* 121 S.Ct. 486.

THEREFORE, IT IS HEREBY ORDERED that defendant's Motion for Appointment of Counsel is **DENIED**.

It is so ordered.

ROBERT L. KACZMAREK
Circuit Judge
10th Judicial Circuit

Dated: October 25 2002.

A TRUE COPY
Susan Kaltenbach, Clerk

Ex. E

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

File No. 01-020597-FH-2
File No. 00-019193-FH-2

ANTONIO HALBERT,

Defendant.
_____/

ORDER OF THE COURT

At a session of said Court, held at the Court House in the City of Saginaw, County of Saginaw, and State of Michigan, this 18th day of December 2001;

PRESENT: HONORABLE ROBERT L. KACZMAREK, Circuit Judge

This matter comes before the Court on Defendant's Motion to Withdraw Plea.

The Defendant was sentenced on December 10, 2001. The Defendant's Motion to Withdraw Plea is not timely as it was made after sentencing on December 11, 2001. After reviewing the record, there was no agreement as to if the sentences were to run concurrent or consecutive. The Defendant's proper remedy is to appeal to the Michigan Court of Appeals. Accordingly, Defendant's motion is **DENIED**.

It is so ordered.

Robert L. Kaczmarek
ROBERT L. KACZMAREK
Circuit Judge
10th Judicial Circuit

Dated: December 18, 2001.

Ex. C

Misc. No. 123342

IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO D. HALBERT-PETITIONER

VS.

STATE OF MICHIGAN- RESPONDENT(S)

PROOF OF SERVICE

I, Antonio D. Halbert, do swear or declare that on this date, January 22, 2004, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Mike Cox, Attorney General
G. Mennen Williams Bldg., 7th Floor
525 W. Ottawa, P.O. Box 30212 Lansing, MI 48909

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2004.

INDEX TO APPENDICES

Exhibit A:	Notice Of Rights After Sentencing And Request For Appointment Of Attorney.
Exhibit B:	Stipulation And Order To Adjourn Trial Schedule For June 12, 2001.
Exhibit C:	DECEMBER 18, 2001 Order Of The Court Denying Defendant's Motion To Withdraw Plea.
Exhibit D:	December 21, 2001 Order Denying Defendant's Request For Appointment Of Counsel To File Application For Leave To Appeal.
Exhibit E:	October 25, 2002 Order Of The Court Denying Defendant's Motion For Appellate Counsel.
Exhibit F:	January 13, 2003 Order Of The Michigan Court Of Appeals Denying Defendant's Delayed Application For Leave To Appeal.
Exhibit G:	September 19, 2003 Order Of The Michigan Supreme Court Denying Defendant's Application For Leave To Appeal the January 12, 2003 Order Of The Court Of Appeals.
Exhibit H:	Letter Of May 21, 2002 From Attorney Rod O'Farrell To Petitioner Regarding Postconviction Relief.
Exhibit I:	Sentencing Information Report For Case No. 00-19193
Exhibit J:	Sentencing Information Report For Case No. 01-20597.
Exhibit K:	Felony Information For Case No. 00-19193.
Exhibit L:	Felony Information For Case No. 01-20597.
Docket Entries:	Case No. 00-19193/Register Of Actions.
Docket Entries:	Case No. 01-20597/Register Of Actions.

Approved, SCAO

Original - Trial court
1st copy - Prosecutor
2nd copy - Defendant/Juvenile for
3rd copy - Defendant/Juvenile

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY	NOTICE OF RIGHTS AFTER SENTENCING (AFTER PLEA OF GUILTY/ NOLO CONTENDERE) AND REQUEST FOR APPOINTMENT OF ATTORNEY	CASE NO. 01-20597-FH-2 Judge: R.L.KACZMAREK (P

Court address: 111 SO. MICHIGAN AVE., SAGINAW, MI 48602 — Court telephon

THE PEOPLE OF THE STATE OF MICHIGAN v Defendant/Juvenile name, address, telephone no., and date of b: ANTONIO DWAYNE HALBERT

NOTICE OF APPEAL RIGHTS Note to Court: This Notice must be given to the defendant/juvenile at sentencing

1. If you wish to appeal your plea or sentence, you may file an application for leave to appeal with the Court of Appeals.

2. If you request the appointment of an attorney and are found indigent, the court must appoint an attorney if: a) the prosecut attorney seeks leave to appeal; or b) your sentence exceeds the upper limit of the minimum sentence range of the applica sentencing guidelines; or c) the Court of Appeals or the Supreme Court grants your application for leave to appeal; or d) y seek leave to appeal a conditional plea under MCR 6.301(C)(2).

   If you request the appointment of an attorney and are found indigent, the court may appoint an attorney if: a) you seek lea to appeal a sentence based upon an alleged improper scoring of an offense variable or a prior record variable; and b) you objecte to the scoring or otherwise preserved the matter for appeal; and c) the sentence imposed by the court constitutes an upwa departure from the upper limit of the minimum sentence range that you allege should have been scored.

3. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted abov within 42 days. The financial schedule on the back of this form must be completed.

RECEIPT OF NOTICE OF APPEAL RIGHTS AND APPLICATION FOR LEAVE TO APPEAL

On this day I received this form and financial schedule and an application for leave to appeal. I understand that I must return the completed Request for Appointment of Attorney to the court within 42 days if I want an attorney appointed for my appeal.

12 December 2001 — Date
Antonio D. Halbert — Signature of defendant/juvenile

REQUEST FOR APPOINTMENT OF ATTORNEY AND AFFIDAVIT OF INDIGENCY

I request appointment of an attorney to appeal my conviction. Conditions for my request are on the back of this form. The affidavit of indigency and financial schedule on the back of this form is submitted to show my financial condition.
☑ I request the court waive the filing fee for my application for leave to appeal.

12 December 2001 — Date
Antonio D. Halbert — Signature of defendant/juvenile

NOTE TO DEFENDANT/JUVENILE: After completing the request for appointment of attorney and the affidavit of indigency and financial schedule, keep one copy for yourself and return the other copy to the court

Ex A.

STATE OF MICHIGAN

IN THE 10TH CIRCUIT COURT FOR THE COUNTY OF SAGINAW

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v.

File No.: 00-19193-FH 2
HON. ROBERT L. KACZMAREK

ANTONIO HALBERT,

Defendant.
_____/

MICHAEL D. THOMAS (P23539)
Attorney for Plaintiff
111 South Michigan Avenue
Saginaw, Michigan 48602
(989) 790-5330

ROD O'FARRELL (P24899)
Attorney for Defendant
1609 Court Street
Saginaw, Michigan 48602
(989) 792-9767
_____/

STIPULATION AND ORDER TO ADJOURN TRIAL SCHEDULED FOR JUNE 12, 2001

IT IS HEREBY STIPULATED AND AGREED BY Attorney for the People of the State of Michigan, MICHAEL D. THOMAS and Attorney for Defendant, ROD O'FARRELL, that the above entitled cause presently scheduled for trial be adjourned to be reset at a date convenient to all parties, due to Attorney, ROD O'FARRELL is continuing a multi-defendant drug conspiracy trial in the United States District Court, case being United States v. Francis Darrell Hayden, case number 99-CR-20011-BC.

WHEREFORE the parties do stipulate that the trial of this cause presently scheduled be adjourned.

Dated: June 7, 2001
Kathleen Ann Miller
MICHAEL D. THOMAS (P23539)
Attorney for Plaintiff

Dated: June 5, 2001
ROD O'FARRELL (P24899)
Attorney for Defendant

Ex B.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

File No. 01-020597-FH-2
Judge Robert L. Kaczmarek

V
ANTONIO DEWAYNE HALBERT
Defendant.
_____ /

ORDER DENYING DEFENDANT'S REQUEST FOR APPOINTMENT
OF COUNSEL TO FILE APPLICATION FOR LEAVE TO APPEAL

At a session of said Court, held in the Courthouse in the City and County of Saginaw, State of Michigan, on the 21st day of December, 2001

PRESENT: HONORABLE Robert L. Kaczmarek, Circuit Court Judge

In this cause, defendant has filed a request for a court appointed attorney to assist him in filing an Application for Leave to Appeal to the Court of Appeals following a voluntary plea.

The Court denies appointment of an attorney at public expense for the following reasons:

☑ 1. The defendant does not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal. People v_ Bulger, 462 Mich 495 (2000), cert den 121 SCt 486.

☑ 2. The defendant fails to set forth any meritorious issue as required by People v_ Najar, 229 Mich 393 (1998) .

☑ 3. The defendant's plea was not conditional.

☑ 4. The defendant's sentence was in accordance with the plea bargain.

☑ 5. The defendant specifically and voluntarily waived his right to have an attorney appointed at public expense to assist him in filing an application for Leave to Appeal or to assist with other post conviction remedies.

☑ 6. The defendant's sentence was within the sentencing guidelines.

Ex. D

LAW OFFICES OF
ROD O'FARRELL
ATTORNEY AT LAW
1609 COURT STREET
SAGINAW, MICHIGAN 48602

TELEPHONES:
(989) 792-9767
FAX: (989) 792-4991

May 21, 2002

Mr. Antonio Halbert #382400
Muskegon Correctional Facility
2400 South Sheridan Road
Muskegon, Michigan 49442-6298

Re: Your Case

Dear Mr. Halbert:

I received a form letter from you discussing concurrent or consecutive sentencing in your case. Your position that the sentences in your case would run concurrent is not correct. I had extensive discussions with you about the fact that the second occurrence occurred while you were on bond on the first case exposing you to consecutive sentencing.

I will not be able to support you in the position that you are taking because it is contradictory to our discussions and also to the record in regard to the agreements that were reached for your plea. I understand that you are proceeding with your appeal without an Attorney and I wish you the best of luck but you are going to be bound by what is disclosed on the record and the facts of the case.

Very truly yours,

ROD O'FARRELL

RJO/kk

Ex. H

SE. .ENCING INFORMATION REPORT

'ender: Halbert, Antonio Dwayne SSN: 432-25-3270 Workload: 2310 Docket Number: 0019193

dge: The Honorable Robert Kaczmarek Bar No.: P15639 Circuit No.: 10 County: 73

Conviction Information

nviction PACC: 750.520C1A Offense Title: CSC, 2nd Degree (Person Under 13)

me Group: Person Offense Date: 12/20/2000

me Class: Class C Conviction Count: 1 of 2 Scored as of: 12/20/2000

atutory Max: 180 Habitual: No Attempted: No

Prior Record Variable Score

RV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0 PRV6: 0 PRV7: 0

Total PRV: 0

PRV Level: A

Offense Variable

OV1: 0 OV2: 0 OV3: 0 OV4: 0 OV5: 0 OV6: 0 OV7: 0

OV8: 0 OV9: 10 OV10: 10 OV11: 0 OV12: 0 OV13: 25 OV14: 0

V16: 0 OV17: 0 OV18: 0 OV19: 0

Total OV: 45

OV Level: IV

Sentencing Guideline Range

uideline Minimum Range : 12 to 24

Minimum Sentence

	Months	Life
Probation:	24	☐
Jail:		
Prison:		☐

Sentence Date: 12-10-01

Guideline Departure: No Consecutive Sentence: Yes

Concurrent Sentence: Yes

Sentencing Judge: RJ Hamm Date: 12-10-01

Prepared By: HALL, DEBRA KAY

Ex. I

SE. .ENCING INFORMATION REPORT

'ender: Halbert, Antonio Dwayne SSN: 432-25-3270 Workload: 2310 Docket Number: 0120597

dge: The Honorable Robert Kaczmarek Bar No.: P15639 Circuit No.: 10 County: 73

Conviction Information

nviction PACC: 750.520C1A Offense Title: CSC, 2nd Degree (Person Under 13)

me Group: Person Offense Date: 07/17/2001

me Class: Class C Conviction Count: 2 of 2 Scored as of: 07/17/2001

atutory Max: 180 Habitual: No Attempted: No

Prior Record Variable Score

RV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0 PRV6: 10 PRV7: 10

Total PRV: 20

PRV Level: C

Offense Variable

OV1: 0 OV2: 0 OV3: 0 OV4: 10 OV5: 0 OV6: 0 OV7: 0

OV8: 0 OV9: 0 OV10: 10 OV11: 0 OV12: 0 OV13: 25 OV14: 0

V16: 0 OV17: 0 OV18: 0 OV19: 0

Total OV: 45

OV Level: IV

Sentencing Guideline Range

uideline Minimum Range : 29 to 57

Minimum Sentence

	Months	Life
Probation:		☐
Jail:		
Prison:		☐

Sentence Date: 12-10-01

Guideline Departure: No Consecutive Sentence: Yes

Concurrent Sentence: Yes

Sentencing Judge: RJ Hamm Date: 12-10-01

Prepared By: HALL, DEBRA KAY

Ex. J

Approved, SCAO

Information - Circuit court
Original complaint - Court
Warrant - Court

Complaint copy - Prosecutor
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN JUDICIAL DISTRICT 10th JUDICIAL CIRCUIT	Page 1 of 3 INFORMATION FELONY	CASE NO. DISTRICT CIRCUIT 00-019193 FH-2

District Court ORI: MI-

Circuit Court ORI: MI-

Defendant's name and address	Victim or complainant
THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT 2545 BEWICK SAGINAW, MI 48601	LORETTA PRICE
	Complaining witness LORETTA PRICE
Co-defendant(s)	Date: On or ~~about~~ before 6/27/00

City/Twp./Village	County in Michigan	Defendant CTN	Defendant SID	Defendant DOB
VARIOUS LOCATIONS IN SAGINAW COUNTY		73 00 004569 01		12/30/67

Police agency report no.	Charge	Maximum penalty
856 2223-00		Defendant DLN

Witnesses

* LORETTA PRICE	* SHAVONNE HARRIS	* JAMES BAKER
* R. WEATHERSPOON	* SHARNAE PERRY	WAVONNE HALBERT
K. MCINERNEY	* ALEXANDRIA BEVERLY	* ERICA FAIRRES
* MARIA MCKINNEY	* DWAYNE FAIRRES	* HELEN DRAKE
* FRED CAVAZOS	* EBONIE MCKINNEY	

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

COUNT I - SECOND DEGREE CRIMINAL SEXUAL CONDUCT - PERSON UNDER THIRTEEN

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Maria McKinney at the Buena Vista Community Center at 1940 S. Outer Drive on June 27, 2000, said person being under 13 years of age; Contrary to Sec. 750.520c(1)(a); M.S.A. 28.788(3)(1)(a). (750.520C1A)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

FILED
SAGINAW COUNTY, MI
Nov 6 10 07 AM '00

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

11/2/00
Date

By: Barbara L. Meter

BARBARA L. METER

MCL 764.1 et seq.; MSA 28.860 et seq., MCL 766.1 et seq.; MSA 28.919 et seq.; MCL 767.1 et seq.; MSA 28.941 et seq., MCR 6.112(D)

MC 200 (4/89) FELONY SET, Information

CIRCUIT COURT

Ex. K

Approved, SCAO

Original complaint - Court
Warrant - Court

Complaint copy - Prosecutor
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN JUDICIAL DISTRICT 10th JUDICIAL CIRCUIT	Page 2 of 3 INFORMATION FELONY	CASE NO. DISTRICT CIRCUIT 00-019193 FH-2

District Court ORI: MI-

Circuit Court ORI: MI-

Defendant's name and address	Victim or complainant
THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT 2545 BEWICK SAGINAW, MI 48601	LORETTA PRICE
	Complaining witness LORETTA PRICE
Co-defendant(s)	Date: On or ~~about~~ before 6/27/00

City/Twp./Village	County in Michigan	Defendant CTN	Defendant SID	Defendant DOB
VARIOUS LOCATIONS IN SAGINAW COUNTY		73 00 004569 01		12/30/67

Police agency report no.	Charge	Maximum penalty
856 2223-00		Defendant DLN

Witnesses

* LORETTA PRICE	* SHAVONNE HARRIS	*JAMES BAKER
* R. WEATHERSPOON	* SHARNAE PERRY	WAVONNE HALBERT
K. MCINERNEY	* ALEXANDRIA BEVERLY	* ERICA FAIRRES
* MARIA MCKINNEY	* DWAYNE FAIRRES	* HELEN DRAKE
* FRED CAVAZOS	* EBONIE MCKINNEY	

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

COUNT II - SECOND DEGREE CRIMINAL SEXUAL CONDUCT - RELATIONSHIP

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shavonne Harris. at 2545 Bewick, on a date in April or May 2000, said victim being at least 13 but less than 16 years of age, to-wit: 13 years old, and the defendant being a member of the same household as the victim; Contrary to Sec. 750.520c(1)(b); M.S.A. 28.788(3)(1)(b). (750.520C1B)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

FILED
SAGINAW COUNTY, MI
Nov 6 10 07 AM '00

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

11/2/00
Date

By: Barbara L. Meter

BARBARA L. METER

MCL 764.1 et seq.; MSA 28.860 et seq., MCL 766.1 et seq.; MSA 28.919 et seq.; MCL 767.1 et seq.; MSA 28.941 et seq., MCR 6.112(D)

MC 200 (4/89) FELONY SET, Information

CIRCUIT COURT

Approved, SCAO

Original complaint - Court
Warrant - Court

Complaint copy - Prosecutor
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 10th JUDICIAL DISTRICT JUDICIAL CIRCUIT	Page 3 of 3 INFORMATION FELONY	CASE NO. DISTRICT CIRCUIT 00-019193 FH-2

District Court ORI: MI-

Circuit Court ORI: MI-

Defendant's name and address	Victim or complainant
THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT 2545 BEWICK SAGINAW, MI 48601	LORETTA PRICE
	Complaining witness LORETTA PRICE
Co-defendant(s)	Date: On or ~~before~~ before 6/27/00

City/Twp./Village	County in Michigan	Defendant CTN	Defendant SID	Defendant DOB
VARIOUS LOCATIONS IN SAGINAW COUNTY		73 00 004569 01		12/30/67

Police agency report no.	Charge	Maximum penalty
856 2223-00		

Witnesses — Defendant DLN

* LORETTA PRICE	* SHAVONNE HARRIS	* JAMES BAKER
* R. WEATHERSPOON	* SHARNAE PERRY	WAVONNE HALBERT
K. MCINERNEY	* ALEXANDRIA BEVERLY	* ERICA FAIRRES
* MARIA MCKINNEY	* DWAYNE FAIRRES	* HELEN DRAKE
* FRED CAVAZOS	* EBONIE MCKINNEY	

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

COUNT III - SECOND DEGREE CRIMINAL SEXUAL CONDUCT - PERSON UNDER THIRTEEN
One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shar'nae Perry, at 2545 Bewick, on a date in June 2000, said person being under 13 years of age; Contrary to Sec. 750.520c(1)(a); M.S.A. 28.788(3)(1)(a). (750.520C1A)
HIV/STD TESTING NOTICE
Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction the court must order the defendant to be tested.
FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

FILED
SAGINAW COUNTY, MI
NOV 6 10 07 AM '00

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney
By: Barbara L. Meter
BARBARA L. METER

11/2/00
Date

MCL 764.1 et seq.; MSA 28.860 et seq., MCL 766.1 et seq.; MSA 28.919 et seq.; MCL 767.1 et seq.; MSA 28.941 et seq., MCR 6.112(D)

MC 200 (4/89) FELONY SET, Information

CIRCUIT COURT

Approved, SCAO

Original complaint - Court
Warrant - Court

Complaint copy - Prosecutor
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 10th JUDICIAL DISTRICT JUDICIAL CIRCUIT	INFORMATION FELONY	CASE NO. DISTRICT CIRCUIT 01-020597 FH-2

District Court ORI: MI-

Circuit Court ORI: MI-

Defendant's name and address	Victim or complainant
THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT 2545 BEWICK SAGINAW, MI 48601	RUSS UPHOLD
	Complaining witness RUSS UPHOLD
Co-defendant(s)	Date: On or about 7/17/01

City/Twp./Village	County in Michigan	Defendant CTN	Defendant SID	Defendant DOB
~~2545 BEWICK, BUENA VISTA TOWNSHIP~~		~~73 01 004748 01~~		~~12/30/67~~

Police agency report no.	Charge	Maximum penalty
~~856 2825-01~~		

Witnesses — Defendant DLN

* RUSS UPHOLD	* ARETHA BLACKMON	* NEIL SOMERS
* SHAVONNE CHARLENE HARRIS	CONNIE CHAPIN	* DAN REINHARDT
BETTY BLONIARCZYK	DAZARENE BLEDSON	
* ROYANA SILER	* CRAIG TUER	

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

SECOND DEGREE CRIMINAL SEXUAL CONDUCT - RELATIONSHIP
One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shavonne Harris, said victim being at least 13 but less than 16 years of age, ~~to-wit:~~ Age 14 years, and the defendant being related to the victim by blood or affinity to the fourth degree; Contrary to Sec. 750.520c(1)(b); M.S.A. 28.788(3)(1)(b). (750.520C1B)
HIV/STD TESTING NOTICE
Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.
FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

No WIT gunshot residue consequences

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney
By: Paul M. Fehrman
PAUL M. FEHRMAN

10-8-01
Date

MCL 764.1 et seq.; MSA 28.860 et seq., MCL 766.1 et seq.; MSA 28.919 et seq.; MCL 767.1 et seq.; MSA 28.941 et seq., MCR 6.112(D)

MC 200 (4/89) FELONY SET, Information

CIRCUIT COURT

ASE: 00-019193-FH OFFENSE: OFFENSE: 6/27/2000

CTIVE: 10/19/2000 JUDGE: ROBERT L. KACZMAREK
LOSED: 12/11/2001 AGENCY: BUENA VISTA TOWNSHIP POLIC

EFENDANT
ALBERT, ANTONIO DWAYNE
545 BEWICK
AGINAW, MI 48601
OB:12/30/1967
HONE:( ) -

DEFENSE ATTORNEY
O'FARRELL, RODNEY J.
1609 COURT ST
SAGINAW, MI 48602-4070
CT APP

CTN: SID:

SP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
NC	1		750.520C1A	2ND DEG CSC-U/13	7/07/2000	F
NP	2	0	750.520C1A	2ND DEG CSC-U/13	7/07/2000	F
NP	3	0	750.520C1A	2ND DEG CSC-U/13	7/07/2000	F

*** END OF CHARGES ***

#/PD	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
1	CHRISTOPHER S. BOYD	PB	30000		S 7/11/2000	
	ANTONIO HALBERT	SU/CA/PB			P 7/27/2000	
2	ROBERT L. KACZMAREK	PB	30000	S12/20/2000		
	ANTONIO HALBERT	P12/20/2000				

*** END OF BONDS ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD CLK
7/07/2000	CF	COMPLAINT FILED	MLD
	WI	WARRANT ISSUED	MLD
	-	TO BUENA VISTA	MLD
7/11/2000	WRT	WARRANT RETURNED	MLD
	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT	MLD
	APR	PRELIM EXAM SCHEDULED FOR 7/20/2000 AT 2:30 PM	D5 GCR
	MIT	MITTIMUS	D2 MAL
	ARR	ARRAIGNMENT	D2 SMB
	-	S/M, $10000 C/S/10% BOND EA. COUNT, NO CONTACT W/VICTIM	D2 SMB
7/11/2000	PET	PETITION FOR COURT APPOINTED ATTORNEY	D2 SMB
	APP	APPEARANCE FILED	D5 CEJ
	-	J GUST	D5 CEJ
7/12/2000	FPC	FILE PULLED FOR COURTROOM	D5 JWS
7/14/2000	*DI	VEHICLE INFO/NEW:	D5 BAB
	*DI	PROSECUTOR ADDED: POD	D5 BAB
	OAC	ORDER APPOINTING COUNSEL	C2 CEJ
	APP	APPEARANCE FILED	D5 CEJ
	-	R OFARRELL	D5 CEJ
7/20/2000	*	ADJ PE, WAIVED 14 DAY SETTING, RESET PRELIM	D5 CEJ
7/27/2000	*	JUDGE DEFRANCESCO APPROVED PROPERTY BOND	D5 CEJ
7/31/2000	*	CERTIFIED COPY OF PROPERTY BOND FILED W/REGISTER OF DEE	D5 CEJ
	-	FEE PAID BY R OFARRELL, COPY GIVEN TO ATTORNEY TO TAKE	D5 CEJ
	-	THE JAIL (DEFENDANT MUST BE PLACE ON MOR IN ADDITION TO	D5 CEJ
	-	TO PROPERTY BOND	D5 CEJ
8/02/2000	PMT	$25.00 MOR FEE - RECEIPT 00080317	D5 LKR
8/18/2000	APR	PRELIM EXAM SCHEDULED FOR 9/26/2000 AT 10:15 AM	D5 GCR
9/20/2000	FPC	FILE PULLED FOR COURTROOM	D5 RSF
9/21/2000	*DI	PROSECUTOR CHANGED: OLD: POD NEW: PAM	D5 JKP
9/25/2000	*AT	O'FARRELL, RODNEY J. REPLACES PRO PER AS ATTORNEY	D5 CEJ

*** CONTINUED NEXT PAGE **

CASE: 00-019193-FH OFFENSE: OFFENSE: 6/27/2000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD CLK
9/26/2000	ADJ	ADJOURNED PRELIM EXAM ORIG. SCHED. 9/26/2000	D5 GCR
	APR	PRELIM EXAM SCHEDULED FOR 10/19/2000 AT 1:30 PM	D5 GCR
9/28/2000	*	STIP AND ORDER TO ADJ. PRELIM EX.	D5 SMB
10/11/2000	FPC	FILE PULLED FOR COURTROOM	D5 JWS
10/13/2000	*DI	PROSECUTOR CHANGED: OLD: PAM NEW: KAM	D5 JKP
	*DI	ALT PROSECUTOR CHANGED: OLD: NEW: BLM	D5 JKP
10/19/2000	*	PRELIM WAIVED, BOCC	D5 CEJ
	PEW	PRE-LIMINARY EXAM WAIVED	D5 CEJ
	CTC	CTS 01-00; 02-00; 03-00;	D5 CEJ
	C	CASE FILED WITH CIRCUIT COURT	C2 JAS
10/20/2000	PFC	PULLED FILE FOR COURTROOM	C2 NRP
10/23/2000	APR	ARRAIGNMENT SCHEDULED FOR 11/06/2000 AT 10:00 AM	C2 SRM
10/26/2000	*	WAIVER OF ARRAIGNMENT & ELECTION TO STAND MUTE OR ENTER	C2 PMC
	-	NOT GUILTY PLEA; +++FWD CTRM++	C2 PMC
10/26/2000	SCH	COURT ADMIN TO SCHEDULE	C2 DAC
	-	TRIAL	C2 DAC
10/30/2000	*	WAIVER OF ARRAIGNMENT FILED.	C2 VKM
11/03/2000	ADJ	ADJOURNED ARRAIGNMENT ORIG. SCHED. 11/06/2000	C2 VKM
	-	WAIVER OF ARRAIGNMENT FILED.	C2 VKM
11/07/2000	02R	CT. REPORTER: K. TAGGET, CSR-3584	C2 LDP
	H	HEARING HELD	C2 LDP
	-	PROS. COPPOLINO PLACED ON RECORD THAT WAIVER FILED	C2 LDP
11/07/2000	INF	FELONY INFORMATION FILED BY PROSECUTOR	C2 LDP
	*	REQUEST FOR DISCOVERY (FILED BY PEOPLE)	C2 LDP
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2 VLY
	*	PROOF OF SERVICE (INFORMATION/REQ. DISC'Y)	C2 LDP
11/30/2000	APR	TRIAL SCHEDULED FOR 2/15/2001 AT 8:30 AM	C2 JMM
12/20/2000	*	ORDER MODIFYING PRE-TRIAL RELEASE SUBSTITUTING DAY	C2 LAH
	-	REPORTING FOR ELECTRONIC MONITORING	C2 LAH
1/11/2001	*DI	ALT PROSECUTOR CHANGED: OLD: BLM NEW:	D5 BAB
2/05/2001	PFC	PULLED FILE FOR COURTROOM	C2 VLY
2/15/2001	02R	CT. REPORTER: K. TAGGET, CSR-3584	C2 LDP
	H	HEARING HELD	C2 LDP
	-	DATE SET FOR TRIAL; DEF W/ATTY R. O'FARRELL, PROS. MILL	C2 LDP
	-	DEF ATTY JUST COMPLETED FEDERAL CT TRIAL AND NO TIME FO	C2 LDP
	-	PREPARATION; ADJOURNMENT REQUESTED; NO OBJECTION BY	C2 LDP
	-	PROS.; ADJOURNMENT GRANTED	C2 LDP
2/15/2001	101	BOND CONTINUED PENDING FURTHER PROCEEDINGS.	C2 LDP
	SCH	COURT ADMIN TO SCHEDULE	C2 LDP
	-	TRIAL	C2 LDP
2/15/2001	APR	TRIAL SCHEDULED FOR 6/12/2001 AT 8:30 AM	C2 JMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2 VLY
6/06/2001	*	STIP. & ORDER TO ADJOURN TRIAL SCHEDULED FOR 6-12-01, F	C2 VKM
	-	THE REASON: ATTY., R. O'FARRELL IS CONTINUING A MULTI-	C2 VKM
	-	DEF. DRUG CONSPIRACY TRIAL IN THE U.S. DISTRICT COURT.	C2 VKM
6/06/2001	ADJ	ADJOURNED TRIAL ORIG. SCHED. 6/12/2001	C2 VKM
	SCH	COURT ADMIN TO SCHEDULE	C2 VKM
6/07/2001	APR	TRIAL SCHEDULED FOR 8/28/2001 AT 8:30 AM	C2 JMM
	PFC	PULLED FILE FOR COURTROOM	C2 NRP
6/08/2001	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2 NRP
7/10/2001	*DI	PROSECUTOR CHANGED: OLD: KAM NEW: PAM	D5 ET

*** CONTINUED NEXT PAGE **

CASE: 00-019193-FH OFFENSE: OFFENSE: 6/27/2000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
8/22/2001	*	NTC OF INTENT TO OFFER OTHER ACTS EVIDENCE	C2	LDP
8/23/2001	PFC	PULLED FILE FOR COURTROOM	C2	NRP
8/27/2001	*	STIP. & ORDER TO ADJOURN TRIAL SCHEDULED 8-28-01	C2	VKM
	-	FOR THE REASON: DUE TO ONGOING PLEA NEGOTIATIONS IN	C2	VKM
	-	LIGHT OF A SECOND NEW CASE ARISING & ATTY., R. O'FARREL	C2	VKM
	-	IS SCHEDULED TO BEGIN TRIAL ON THE CASE OF PEOPLE VS	C2	VKM
8/27/2001	SCH	COURT ADMIN TO SCHEDULE	C2	VKM
8/28/2001	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	MIK
	-	TIMOTHY BURCH, 01 019568 FC.	C2	VKM
8/28/2001	ADJ	ADJOURNED TRIAL ORIG. SCHED. 8/28/2001	C2	LDP
	-	STIP/ORDER TO BE SUBMITTED	C2	LDP
8/31/2001	APR	TRIAL SCHEDULED FOR 11/06/2001 AT 8:30 AM	C2	JMM
11/01/2001	PFC	PULLED FILE FOR COURTROOM	C2	MIG
11/06/2001	NH	NOT HEARD	C2	LDP
	-	DEF ATTY IN TRIAL IN CARO; ADJ'D TO 11/7 FOR PLEA	C2	LDP
11/06/2001	APR	ARRGNMT/PLEA SCHEDULED FOR 11/07/2001 AT 8:30 AM	C2	LDP
11/07/2001	02R	CT. REPORTER: K. TAGGET, CSR-3584	C2	LDP
	PLG	DFDT PLEAD GUILTY TO	C2	LDP
	-	DEF W/ATTY R. O'FARRELL, PROS. P. MARSHALL; DEF PLED	C2	LDP
	-	NOLO CONTENDRE TO CT 1, CSC2D DEGREE; PROS. RECOMMENDS	C2	LDP
	-	CTS 2 & 3 BE DISMISSED AT SENTENCING; PROS. RECOMMENDS	C2	LDP
	-	CONSECUTIVE SENTENCING W/01-20597-FH-2; COURT ACCEPTED	C2	LDP
	-	NC PLEA; REF'D TO DOC (DEF ATTY REQUESTS CONC. SENTENCE	C2	LDP
	-	(POLICE RPT SUBMITTED FOR COURT REVIEW)	C2	LDP
11/07/2001	DOC	REFERRED TO DEPARTMENT OF CORRECTIONS	C2	LDP
	NC	NOLLE CONTENDRE PLEA 01-00 2ND DEG CSC-U/13	C2	LDP
	APR	SENTENCE SCHEDULED FOR 12/10/2001 AT 10:15 AM	C2	LDP
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM CATHY E. THOMPSON ON BE	C2	JAS
	-	HALF OF DEF ***FWD TO CTRM***	C2	JAS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM JEFFREY L. THOMPSON,MGR	C2	JAS
	-	ERNS SEAFOOD ON BEHALF OF DEF **FWD TO CTRM***	C2	JAS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM ERNEST THOMPSON SR, OWN	C2	JAS
	-	PRES, ERN'S SEAFOOD ON BEHALF OF DEF ***FWD TO CTRM***	C2	JAS
12/10/2001	07R	CT. REPORTER: T. STEMLER, CSR-4023	C2	LDP
	S	SENTENCED	C2	LDP
	-	DEF W/ATTY RODNEY O'FARRELL, PROS. COPPOLINO, DOC REPR;	C2	LDP
	-	DEF SENTENCED TO 24 MOS MIN/15 YEARS MAX, CREDIT FOR	C2	LDP
	-	164 DAYS; PAY $60 VRF W/IN 30 DAYS; TO BE SERVED PRIOR	C2	LDP
	-	TO AND CONSECUTIVE W/01-20597-FH-2	C2	LDP
12/10/2001	NP	NOLLE PROS 02-00 2ND DEG CSC-U/13	C2	LDP
	NP	NOLLE PROS 03-00 2ND DEG CSC-U/13	C2	LDP
	*	MOTION/ORDER OF NOLLE PROSEQUI	C2	LDP
	NAR	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT	C2	LDP
	SN	COUNT 01-00 SENTENCED	C2	LDP
12/11/2001	JOS	JUDGMENT OF SENTENCE	C2	LDP
	*	SENTENCING INFORMATION REPORT	C2	LDP
	FDC	FINAL DISPOSITION-GUILTY PLEA	C2	LDP
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
12/14/2001	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	MIG
12/17/2001	DM	DEFENSE MOTION	C2	LDP

*** CONTINUED NEXT PAGE **

DATE: 4/01/2002 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE
PEOPLE VS ANTONIO HALBERT

CASE: 00-019193-FH OFFENSE: OFFENSE: 6/27/2000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	MTN TO WITHDRAW PLEA; NTC HRG 12/17/01	C2	LDP
12/18/2001	RAC	REQUEST FOR APPELLATE ATTY FORWARDED O-A-C	C2	LDP
	OPO	OPINION AND ORDER OF THE COURT	C2	LDP
	-	DENIES DEF'S MTN TO WITHDRAW PLEA	C2	LDP
12/21/2001	*	ORDER DENYING DEF'S REQUEST FOR APPT.OF COUNSEL TO FILE	C2	LDP
	-	APPL. LEAVE TO APPEAL	C2	LDP
3/06/2002	*	REQUEST FOR DOCUMENTS/TRANSCRIPTS FILED BY DEF ++FWD CT	C2	CMR
3/18/2002	OPO	OPINION AND ORDER OF THE COURT	C2	LDP
	-	GRANTS DEF'S MTN FOR COURT DCMTS; ORDERS CLERK OF CT	C2	LDP
	-	TO FURNISH DEF W/COPY OF HIS FILES, TRANSCRIPTS TO BE	C2	LDP
	-	PREPARED AT NO COST	C2	LDP
3/21/2002	PFC	PULLED FILE FOR COURTROOM	C2	MIG
3/22/2002	*	TRANSCRIPT OF SENTENCE 12/10/01	C2	PMC
3/25/2002	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	MIG
4/01/2002	*	PER ORDER MAILED TO ANTONIO HALBERT #382400 MUSKEGON	C2	FKL
	-	CORR. FAC. 2400 SHERIDAN RD. MUSKEGON, MI. 49442 COPIES	C2	FKL
	-	OF FILE, SENTENCING TRANS. AND DOCKET ENTRIES	C2	FKL

*** END OF CASE ***

CASE: 01-020597-FH OFFENSE: OFFENSE: 7/17/2001

ACTIVE: 9/13/2001 JUDGE: ROBERT L. KACZMAREK
CLOSED: 12/11/2001 AGENCY: BUENA VISTA TOWNSHIP POLIC

A TRUE COPY
Susan Kaltenbach, Clerk

DEFENDANT	DEFENSE ATTORNEY
HALBERT, ANTONIO DWAYNE	O'FARRELL, RODNEY J.
1602 WALNUT	1609 COURT ST
SAGINAW, MI 48601	SAGINAW, MI 48602-4070
DOB:12/30/1967	CT APP
PHONE:( ) -	CTN: SID:

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
NC	1	0	750.520C1B	CSC 2ND DEGREE-RELAT	7/18/2001	F
			***	END OF CHARGES ***		

#/P'D	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
1	TERRY L. CLARK	SU	50000	S	7/26/2001	
		CA/PB				
		***	END OF BONDS ***			

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
7/18/2001	CF	COMPLAINT FILED		CEJ
	WI	WARRANT ISSUED		CEJ
	-	TO BVPD		CEJ
7/18/2001	PBF	PROSECUTOR BOND RECOMMENDATION FORM		CEJ
7/26/2001	*AD	ADDR CHG/OLD: 2545 BEWICK		TLN
	*AD	ADDR CHG/NEW: 1602 WALNUT		TLN
	WRE	WARRANT RECALLED		TLN
	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT		TLN
	*AT	O'FARRELL, RODNEY J. REPLACES PRO PER AS ATTORNEY		TLN
	APP	APPEARANCE FILED		TLN
	APR	PRELIM EXAM SCHEDULED FOR 8/08/2001 AT 2:30 PM	D2	PE
	OF	ORDER FOR FINGERPRINTS	D2	SMB
	MIT	MITTIMUS	D6	SMB
	ARR	ARRAIGNMENT	D6	MLD
	-	$50,000 C/S/P BOND, NO CONTACT W/VICTIM, HIRE R O'FARRE	D6	MLD
7/26/2001	BCI	BOND CONDITION ISSUED	D6	MLD
7/27/2001	ADJ	ADJOURNED PRELIM EXAM ORIG. SCHED. 8/08/2001	D2	MAL
	APR	PRELIM EXAM SCHEDULED FOR 8/21/2001 AT 1:30 PM	D2	MAL
8/03/2001	FIF	FINGERPRINTS IN FILE	D2	CEJ
8/06/2001	WRT	WARRANT RETURNED	D2	MLD
8/20/2001	ADJ	ADJOURNED PRELIM EXAM ORIG. SCHED. 8/21/2001	D2	MAL
	APR	PRELIM EXAM SCHEDULED FOR 9/12/2001 AT 10:00 AM	D2	MAL
	FPC	FILE PULLED FOR COURTROOM	D2	MAL
9/10/2001	FPC	FILE PULLED FOR COURTROOM	D2	TML
9/12/2001	PEW	PRE-LIMINARY EXAM WAIVED	D2	MLD
	BOC	CTS 01-00;	D2	MLD
	*	PRELIM WAIVED, BOND CONT'D, BOCC	D2	MLD
9/13/2001	C	CASE FILED WITH CIRCUIT COURT	C3	JAS
	*	DEF HAS PRIOR OPEN CASE; 00-19193 FH-2	C3	JMM
	*JU	ROBERT L. KACZMAREK REPLACES LYNDA L. HEATHSCOTT AS JUD	C2	JMM
	PFC	PULLED FILE FOR COURTROOM	C2	CMJ
9/14/2001	ORA	ORDER OF INTERNAL REASSIGNMENT	C2	JMM
9/18/2001	APR	ARRAIGNMENT SCHEDULED FOR 10/01/2001 AT 10:00 AM	C2	SRM

*** CONTINUED NEXT PAGE **

CASE: 01-020597-FH OFFENSE: OFFENSE: 7/17/2001

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
9/20/2001	ADJ	ADJOURNED ARRAIGNMENT ORIG. SCHED. 10/01/2001	C2	LDP
	-	JUDICIAL CONFERENCE	C2	LDP
9/20/2001	APR	ARRAIGNMENT SCHEDULED FOR 10/08/2001 AT 10:00 AM	C2	LDP
10/08/2001	02R	CT. REPORTER: K. TAGGET, CSR-3584	C2	LDP
	100	DEFENDANT PRESENT IN COURT WITH COUNSEL, WAIVED READING	C2	LDP
	-	OF INFORMATION; STOOD MUTE, COURT ENTERED NOT GUILTY	C2	LDP
	-	PLEA.	C2	LDP
10/08/2001	101	BOND CONTINUED PENDING FURTHER PROCEEDINGS.	C2	LDP
	SCH	COURT ADMIN TO SCHEDULE	C2	LDP
	-	TRIAL	C2	LDP
10/08/2001	INF	FELONY INFORMATION FILED BY PROSECUTOR	C2	LDP
10/09/2001	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	FKL
10/17/2001	APR	TRIAL SCHEDULED FOR 11/06/2001 AT 8:30 AM	C2	JMM
	-	SET AT SAME TIME AS DEF'S OTHER CASE	C2	JMM
11/01/2001	PFC	PULLED FILE FOR COURTROOM	C2	MIG
11/06/2001	NH	NOT HEARD	C2	LDP
	-	DEF ATTY IN TRIAL IN CARO; SET FOR PLEA 11/7	C2	LDP
11/06/2001	APR	ARRGNMT/PLEA SCHEDULED FOR 11/07/2001 AT 8:30 AM	C2	LDP
11/07/2001	02R	CT. REPORTER: K. TAGGET, CSR-3584	C2	LDP
	PLG	DFDT PLEAD GUILTY TO	C2	LDP
	-	DEF W/ATTY R. O'FARRELL, PROS. P. MARSHALL, DOC REPR; D	C2	LDP
	-	PLED NOLO CONTENDRE TO CSC 2ND DEGREE/VICTIM SHAVONNE	C2	LDP
	-	HARRIS; POLICE REPORT PROVIDED TO COURT FOR CONSIDERATI	C2	LDP
	-	PROS. REQUESTS CONSECUTIVE SENTENCINGW/00-10193-FH-2,	C2	LDP
	-	DEF ATTY REQUESTS CONCURRENT; COURT ACCEPTED NC PLEA	C2	LDP
11/07/2001	NC	NOLLE CONTENDRE PLEA 01-00 CSC 2ND DEGREE-RELAT	C2	LDP
	APR	SENTENCE SCHEDULED FOR 12/10/2001 AT 10:15 AM	C2	LDP
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM CATHY E. THOMPSON ON BE	C2	JAS
	-	HALF OF DEF ***FWD TO CTRM***	C2	JAS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM JEFFREY L. THOMPSON, MG	C2	JAS
	-	ERN'S SEAFOOD ON BEHALF OF DEF **FWD TO CTRM***	C2	JAS
12/05/2001	*	CHARACTER REFERENCE LETTER FROM ERNEST THOMPSON SR, OWN	C2	JAS
	-	ERN'S SEAFOOD ON BEHALF OF DEF ***FWD TO CTRM***	C2	JAS
12/10/2001	07R	CT. REPORTER: T. STEMLER, CSR-4023	C2	LDP
	S	SENTENCED	C2	LDP
	-	DEF W/ATTY O'FARRELL, PROS. COPPOLINO, DOC REPR; DEF	C2	LDP
	-	SENTENCED TO 57 MOS. MIN/15 YEARS MAX, TO BE SERVED	C2	LDP
	-	FOLLOWING & CONSECUTIVE W/00-19193-FH-2, NO CREDIT FOR	C2	LDP
	-	TIME SERVED; $60 VRF W/IN 30 DAYS	C2	LDP
12/10/2001	NAR	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT	C2	LDP
	SN	COUNT 01-00 SENTENCED	C2	LDP
12/11/2001	JOS	JUDGMENT OF SENTENCE	C2	LDP
	*	SENTENCING INFORMATION REPORT	C2	LDP
	FDC	FINAL DISPOSITION-GUILTY PLEA	C2	LDP
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
12/14/2001	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C4	MIG
12/17/2001	DM	DEFENSE MOTION	C2	LDP
	-	MTN TO WITHDRAW PLEA; NTC HRG 12/17/01, 8:30	C2	LDP
12/18/2001	OPO	OPINION AND ORDER OF THE COURT	C2	LDP

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